

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

INCREDIBLEBANK,)
Plaintiff,)
)
v.)
)
PROVOCATIVE (O.N. 1248080), *in*)
rem; and JONATHAN COHEN, *in*)
personam.) C.A. No. 22-cv-445-JJM-PAS
Defendants,)
)
and)
)
OUTERLIMITS POWERBOAT INC.)
Custodian.)
)

ORDER

Pending before the Court is IncredibleBank's ("Incredible") Motion for Final Judgment on the Pleadings under Fed. R. Civ P. 12(c) asserting its rights under Rule D of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions, to possession and title to the Secured Property and for interim judgment of liability against Jonathan Cohen based on his breach of the operative agreements, with further proceedings to calculate the amount of damages. ECF No. 20. Outerlimits Powerboat Inc, ("Outerlimits") was the original manufacturer of the vessel in question and is the location where the Secured Property is currently located. Outerlimits was appointed by the Court as the substitute custodian of the Secured Property.

This matter was referred to the Magistrate Judge for a report and recommendation, which she issued on December 14, 2023. ECF No. 34. No objection has been received to the Report and Recommendation. After consideration of all the filings, and the Report and Recommendation, the Court accepts in full the Report and Recommendation for the reasons stated and

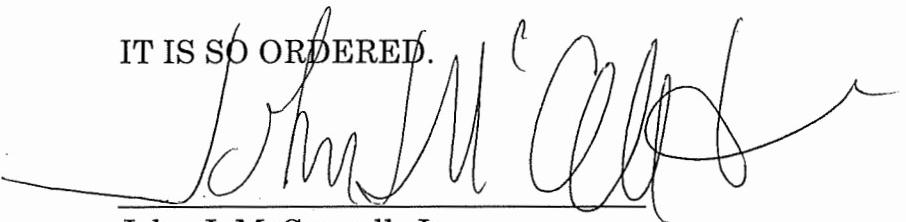
ORDERS, ADJUDGES, AND DECREES

The Court GRANTS IN PART AND DENY IN PART Incredible's Motion for Judgment on the Pleadings (ECF No. 20) as follows:

- (1) The Court ENTERS PARTIAL FINAL JUDGMENT *in rem* in favor of Incredible and against Mr. Cohen on Count I for possession of the Secured Property, with the right to sell and convey title as set out in the Security Agreement;
- (2) The Court DENIES the Motion for Judgment of title on Count II; and
- (3) The Court ENTERS PARTIAL INTERIM JUDGMENT *in personam* in favor of Incredible and against Mr. Cohen on Count III, adjudging Mr. Cohen liable to Incredible based on his breaches of the Promissory Note, the Modification Agreement, and the Security Agreement with further proceedings for calculation of the net damages to be awarded;
- (4) The Court DISMISSES without prejudice Incredible's replevin claim (Count IV) against the Secured Property and that Mr. Cohen be exonerated from any ongoing responsibility for the Secured Property, including for ongoing *custodia legis* fees and expenses incurred by Outerlimits.

(5) Mr. Cohen's rights under applicable law and the terms of the Promissory Note and the Security Agreement, including his right to the surplus (if any) remaining following any sale of the Secured Property and the satisfaction in full of all liens (including Incredible's judgment and Outerlimits' maritime liens and *custodia legis*) will not be adversely impacted.

IT IS SO ORDERED.



John J. McConnell, Jr.
Chief Judge
United States District Court

January 3, 2024